

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

**ALBERT GENE JOHNSON**

§

**V.**

§

**CA C-05-223**

**SGT MARCUS D. FORD, ET AL.**

§

**MEMORANDUM OPINION DENYING MOTION FOR RECONSIDERATION OF  
ORDER DENYING ENTRY OF SUMMARY JUDGMENT ON THE ISSUE OF  
EXHAUSTION**

Pending is defendants' motion for reconsideration of the order denying summary judgment on the issue of exhaustion(D.E. 46). The motion was filed within ten days of entry of the order denying summary judgment, and is treated as a motion to alter or amend the judgment. FED. R. CIV. P. 59(e). The motion is denied for the reasons given in the order denying summary judgment on the issue of exhaustion (D.E. 41).

In addition, the motion is denied because it is undisputed that plaintiff filed both his Step One and Step Two grievances -- only the grievances were returned unprocessed. Plaintiff initially did not seek a remedy from the grievance procedure because he had written letters to prison officials who had advised him that his complaint of failure to receive his insulin shots would be investigated. Plaintiff heard nothing about the results of the investigation, and when he inquired, he was told to use the grievance procedure. Plaintiff immediately filed his grievance, but the grievance was returned unprocessed because the time period had expired. Plaintiff also filed a step two grievance, but it was returned because the step one grievance had never been processed. Prison officials misled plaintiff into believing some action was being taken on his

complaint—then officials advised him to utilize the grievance procedure but refused to process his grievance. Plaintiff sufficiently exhausted all administrative remedies available to him.

ORDERED this 17<sup>th</sup> day of May, 2006.

  
B. JANICE ELLINGTON  
UNITED STATES MAGISTRATE JUDGE